

REMARKS

This Response After Final is made to the Office Action dated December 2, 2004. Claims 1-9 and 13-22 are pending in this application. Favorable reconsideration is requested.

Claims 1-9 and 13-22 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,152,946 to Broome et al. (the “Broome patent”). In the previous Office Actions, the Examiner has indicated that the Broome patent discloses the use of a directional member 20/36 shown in FIG. 6. This fold 36, however, is part of the self-expanding frame 24 which helps to collapse the frame 24 into a delivery position within a lumen of a delivery sheath 64. The frame 24 and folds 36 are formed from Nitinol alloy or other material that allows the frame to “spring” from a collapsed position to an expanded position only after the force imparted via the delivery sheath 64 is released. The Examiner’s position that this fold 36 of the frame is capable of expanding through the application of fluid flow is simply speculative. Moreover, the fact that the Broome frame must be made from a self-expanding material actually suggests the opposite conclusion reached by the Examiner since if the frame was capable of being opened by the fluid flow, there would be no need to make the frame from a self-expanding material. Additionally, Applicant submits that this fold 36 has such a small width that normal body flow would be incapable of pushing the fold 36 into the expanded position. The presently claimed invention also recites the use of a pliable material to form the directional member. This fold 36 of the frame 24 of the Broome patent must remain somewhat stiff in order to hold the filter 20 in the expanded position. This leads Applicant to believe that the Examiner’s position that the frame and fold are pliable is also speculative. For these reasons, Applicants submits that the Broome patent fails to disclose the presently claimed invention.

Applicant’s invention, on the other hand, utilizes fluid flow and pressure in the vessel to act on the directional member, as recited in the claims, to deploy the filtering portion in the vessel. Without the presence of a fluid flow, the directional member of the present invention would not expand, as would the self-expanding frame and folds

disclosed in the Broome patent. The Broome patent needs a separate self-expanding frame to open up the filter once released from the delivery catheter. Accordingly, it does not rely on the presence of fluid flow to open the filter. Applicant's invention will deploy only when sufficient fluid flow is achieved in the body vessel. Applicant strongly disagrees with the Examiner's position that only a recitation of the intended use is being claimed. All of the pending claims define the directional member in terms of structure rather than intended use. This structure includes the recitation that the directional member is made from a pliable material capable of being expanded by the fluid flow in a body vessel. Applicant believes that this terminology provides sufficiently structural support and patently distinguishes the presently claimed invention from the Broome patent. Accordingly, Applicant respectfully requests the Examiner to withdraw the anticipatory rejection to all of the pending claims.

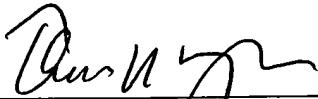
In view of the foregoing, it is respectfully urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above amendments and remarks, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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